



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1995

Mr. Gregory Pfeifer
Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-1389

Dear Mr. Pfeifer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35379.

The Texas Natural Resource Conservation Commission received a request for information relating to the Hi Yield Superfund Site. You contend that the requested information is excepted from required public disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.

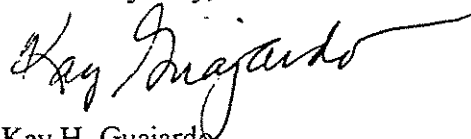
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a); the requested records may, therefore, be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982);

Open Records Decision No. 350 (1982). As we resolve your request under section 552.103, we need not address the applicability of sections 552.107 and 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay H. Guajardo", with a long, sweeping horizontal line extending to the right.

Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/ch

Ref: ID# 35379

Enclosures: Submitted documents

cc: Mr. Michael A. Piazza
McKool Smith
300 Crescent Court, Suite 1500
Dallas, Texas 75201
(w/o enclosures)